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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,912

Applicant(s)

NGUYEN ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-131 is/are pending in the application.
- 4a) Of the above claim(s) 43-131 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1 This action is responsive to the applicant's election received by the office on August 21, 2003.

2 Applicant's election with traverse to prosecute the invention of Group I. Election of claims 1-42 is acknowledged. Claims 43-131 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Therefore, claims 1-42 are pending in this application.

3 The traversal is on the ground(s) that the examiner has not demonstrated that examining Group I and II will constitute a serious burden and the search and examination of an entire application can be made without serious burden. This is not found persuasive because the inventions of groups I and II are distinct and they are classified and searched in different classes and subclasses and the search required for each group is not required for the other groups of inventions. Therefore, restriction for examination purposes as indicated is proper. The requirement is still deemed proper and is therefore made FINAL.

4 Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

5 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 10, 18-19 and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Bore et al (US 3,971,391).

Bore (US' 391) teaches an aqueous hair relaxing composition comprising an alkaline metal of sodium hydroxide and a reducing agent of alkaline-metal sulfites as claimed in claims 1-4, 10, 18-19, 40 (see col. 4, lines 15-57) and cationic surfactants as claimed in claim 38 (see col. 5, lines 47-48), wherein the composition is a oil-in-water emulsion as claimed in claim 39 (see col. 5, lines 63-64). Bore also teaches a heat-activated composition as claimed in claim 41 (see col. 4, lines 24-26). Bore teaches all the limitations of the instant claims. Hence, Bore anticipates the claims.

Claim Rejections - 35 USC § 103

6 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 11 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al. (US 3,971,391).

Bore (US' 391) teaches an aqueous hair relaxing composition comprising an effective amount of alkaline metal of sodium hydroxide (see col. 12, claim 1) and a reducing agent of alkaline-metal sulfites in a concentration of up to 3×10^{-2} moles per liter which is overlapped with the claimed range as claimed in claims as claimed in claim 11(see col. 4, lines 52-55).

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The instant claims differ from the reference by reciting optimal amounts of the ingredients in the composition.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by optimizing the amount of the ingredients in the composition because the reference teaches a composition that comprises an effective amount of alkaline metal hydroxides and alkaline metal sulfites in the amounts which overlapped with the claimed ranges, and, thus, a person of the ordinary skill in the art would optimize the amounts of the ingredients in the composition so as to get the maximum effective amounts and would expect such a composition to have similar properties to those claimed, absent unexpected results.

7 Claims 7-9, 20-24 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al. (US 3,971,391) in view of Mathews et al. (US 4,816,246).

The disclosure of Bore (US'391) is summarized above. The reference does not teach a composition that comprises thiol compounds as claimed.

However, the reference teaches a composition comprising sulfite compounds as reducing agents (see col. 4, lines 52-57).

Mathews (US' 246) in analogous art of hair relaxing compositions, teaches a composition comprising ammonium thioglycolate compounds as claimed in claims 7-9 (see col. 2, lines 35-38) and a sequestering agent as complexing agent as claimed in claims 20-21 (see col. 4, line 22) and chelating agents such as ethylenediaminetetraacetic acid (EDTA) as claimed in claims 23-24 and 34-37 (see col. 4, line 37) wherein the composition is formulated from water soluble

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components (see col. 7, lines 35-36) which implies that the dissociation is full as claimed in claim 22.

Therefore, in view of the teaching of the secondary reference one having ordinary skill in the art at the time the invention was made would be motivated to modify the primary reference of Bore by incorporating the reducing agent of ammonium thioglycolate compound and the sequestering agent as taught by Mathews to make such a composition. Such modification would be obvious because the primary reference of Bore clearly suggests the use of sulfur-containing compound (see col. 4, lines 52-55) and the secondary reference of Mathews teaches the use of ammonium thioglycolate compounds as reducing agents and sequestering agents which are well known in the art (see col. 4, lines 19-24), thus, a person of the ordinary skill in the art would be motivated to incorporate the ammonium thioglycolate and sequestering compounds in the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

8 Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al. (US 3,971,391) in view of Au et al. (US 5,872,111).

The disclosure of Bore (US' 391) is summarized above. The reference does not teach at least one cation exchange component (thickeners) as claimed.

However, the primary reference of Bore teaches a composition comprising adjuvants that usually used in creams or gels (see col. 5, lines 66-67).

Au (US' 111) in another analogous art teaches a shampoo composition comprising clay materials such as aluminum silicates as thickeners as claimed in claims 12-14 (see col. 15, lines 5-7), zeolites and aluminosilicates as claimed in claims 15-17 (see col. 20, line 37).

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Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by incorporating the thickener components as taught by Au with the reasonable expectation of success because the primary reference of Bore suggest the use of adjuvants that usually known and used in creams and gels and Au suggests the use of these ingredients in the shampoo compositions for rendering such compositions more formulatable, or aesthetically and/or cosmetically acceptable (see col. 14, lines 14-18), and, thus, a person of the ordinary skill in the art would be motivated to incorporate these ingredients in the hair treating composition to make the composition more formulatable and acceptable and, would expect such a composition to have similar properties to those claimed, absent unexpected results.

9 Claims 25-27 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al. (US 3,971,391) in view of Mathews et al. (US 4,816,246) and further in view of Au et al. (US 5,872,111).

The disclosures of Bore (US' 391) and Mathews are summarized above. The references do not teach at least one complexing agent component as claimed.

However, the primary reference of Bore teaches a composition comprising adjuvants that usually used in creams or gels (see col. 5, lines 66-67) and Mathews teaches a composition comprising sequestering agents, conditioners, thickeners and other additive that well known in the art (see col. 4, lines 19-25).

Au (US' 111) in another analogous art teaches a shampoo composition comprising tripotassium phosphates and sodium basic silicates (disodium silicates), citric acid as a poly-

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hydroxy-carboxylic acid and amino acids as claimed in claims 25-27 and 29-33 (see col. 10, line 64, col. 14, line 29, col. 25, lines 28 and 50-53).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by incorporating the complexing components as taught by Au with the reasonable expectation of success because the primary reference of Bore suggest the use of adjuvants that usually known and used in creams and gels and Au suggests the use of these ingredients in the shampoo compositions for rendering such compositions more formulatable, or aesthetically and/or cosmetically acceptable (see col. 14, lines 14-18), and, thus, a person of the ordinary skill in the art would be motivated to incorporate these ingredients in the hair treating composition to make the composition more formulatable and acceptable and, would expect such a composition to have similar properties to those claimed, absent unexpected results.

10 Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al. (US 3,971,391) in view of Mathews et al. (US 4,816,246), in view of Au et al. (US 5,872,111).

And further, in view of Plyes et al. (US 2001/0008630 A1).

The disclosures of Bore (US' 391), Mathews (US' 246) and Au (US' 111), are summarized above. The references do not teach sequestering agent of sodium glutamate as claimed.

However, the primary reference of Bore teaches a composition comprising adjuvants that usually used in creams or gels (see col. 5, lines 66-67) and Mathews teaches a composition comprising sequestering agents, conditioners, thickeners and other additives that well known in

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the art (see col. 4, lines 19-25) and Au teaches a composition comprising amino acids (see col. 10, line 64).

Pyles (US' 630) teaches in other analogous art a hair treating composition comprising sodium glutamate as claimed in claim 28 (see page 4, paragraph 0091).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by incorporating the sequestering agent of sodium glutamate with the reasonable expectation of success because the primary reference of Bore suggest the use of adjuvants that usually known and used in creams and gels and Pyles teaches the use of sodium glutamate in the composition, and, thus, a person of the ordinary skill in the art would be motivated to incorporate sodium glutamate in the hair treating composition as a sequestering agent and, would expect such a composition to have similar properties to those claimed, absent unexpected results.

Conclusion

The remaining references listed on form 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Eisa Elhilo
Patent Examiner
Art Unit 1751

October 17, 2003